

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 549 of 1997

in

SPECIAL CIVIL APPLICATION No 9512 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

AKSHAY AMRUTLAL THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR AJ SHASTRI for Petitioner

Ms. Binoda Gajjar for the respondent-State

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT
Date of decision: 30/07/97

ORAL JUDGEMENT(Per:Thakker J)

Admitted. Ms. Binoda Gajjar, learned Assistant Government Pleader waives service of notice of admission on behalf of respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This appeal is preferred against an order passed by the learned single Judge dismissing Special Civil Application No.9512/96 on April 30,1997. The appellant is the original petitioner who was working as a Home Guard. By an order dated 30.11.96 he has been terminated from services. Mr. Shastri learned counsel for the appellant submitted that similar matters came up before a Division Bench of this Court to which one of was a party (C.K.Thakker.J) wherein constitutional validity of the Bombay Home Guards Act 1953 was challenged. Though the Division Bench did not express any opinion one way or the other regarding to the constitutional validity of the Act, the order was set aside on the ground that the authority which could pass an order of termination would be either District Commandant or Commandant General. Since the orders were passed by the Government, they were invalid. Relying upon the decision in Anirudhansinhji Karansinhji Jadeja vs. The State of Gujarat JT 1995(6) [SC 146 this Court held that the orders passed by the authority were illegal. The decision of the Division Bench is reported in 1997 GLH 358 (Chandubhai Kanjibhai Patel vs. State of Gujarat & ors.)

3. In the instant case also, the order is passed by the Government ,a copy of which is placed on record of this case and it is stated at the bar that on a single day, a number of such orders were passed and the impugned order is one of item. Similar orders were passed in all other cases which have been mentioned in the case of Chandubhai Kanjibhai (Supra).

4. Since the point is concluded by earlier decision in Chandubhai Kanjibhai (Supra). , the appeal deserves to be allowed and it is accordingly allowed. The order passed by the learned single Judge is quashed. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)

